him. Before the warrant was executed the defendant appeared in court and the magistrate proceeded to deal with the charges against the defendant in the absence of a prosecuting officer. The defendant pleaded guilty and a fine was imposed. On revision,

Held: the magistrate should not have proceeded with the case in the absence of a prosecuting officer and section 137 of the Criminal Procedure Code does not entitle a magistrate in these circumstances to proceed with the case.

CRIMINAL REVISION.

Salleh bin Abbas (Deputy Public Prosecutor) for the Public Prosecutor.

Yong Pung-How for Lim Yew Siang.

Gill J.: This case was brought to my knowledge by the Public Prosecutor, and I decided to deal with it in revision because it was clear from what transpired in the Magistrate's Court that the matter could not be brought up before this court in the normal way of an appeal within the prescribed period. In any event the party to be affected by the order which I proposed to make in the circumstances of the case was given an opportunity to be heard and was indeed represented by an advocate.

The defendant was charged in the Magistrate's Court, Kuala Lumpur with failing to pay contributions to the Employees' Provident Fund under sections 7 and 8 of the Employees' Provident Fund Ordinance, 1951 and as required by regulation 3 of the Employees' Provident Fund Regulations, 1962, thereby committing an offence under section 16A(1)(c). The proceedings against him were commenced by way of a summons which was issued on 1st June, 1963 and made returnable on 24th June, 1963. The summons was served on the defendant on 11th March, 1963, but he failed to appear in court on the appointed day, whereupon the court issued a warrant for his arrest and fixed the case for mention on 22nd July, 1963. On 22nd July, 1963 the prosecuting officer was informed by the court interpreter that the case was postponed to 19th August, 1963. When the prosecuting officer appeared in court on 19th August, 1963 he was informed by the court interpreter that the case had been dealt with on 9th August, 1963.

It would appear that the warrant issued for the arrest of the defendant was never executed. The defendant appeared in court of his own volition on 9th August, 1963, whereupon the magistrate cancelled the warrant of arrest and proceeded to deal with the case in the absence of a prosecuting officer. The defendant pleaded guilty to the charge and he was convicted on his own plea and sentenced to a fine of $20. He was also ordered to pay $40 to the Employees' Provident Fund.

What the magistrate did was highly irregular, if not illegal. There was nothing wrong about the defendant appearing in court on 9th August, 1963 so as to avoid the indignity of being arrested and produced in court, but the magistrate should not have proceeded to deal with the case without reference to the prosecuting officer. If there was no prosecuting officer then present in court, he should have stood the case down until a prosecuting officer was present to give him the facts of the case without which it is not possible for a court to assess the appropriate sentence. Presumably the magistrate purported to act under section 137 of the Criminal Procedure Code but that section does not entitle the court to deal with the case in the absence of somebody to represent the Public Prosecutor. In the circumstances I set aside the order of conviction and sentence and left it open to the appropriate authority to take out a fresh summons against the defendant.

Order of conviction and sentence set aside.

Solicitors: *Shook Lin & Bok.*

RE ENG CHONG LAM

[R.Cr.J. (Gill J.) November 11, 1963]

[K.L. — Criminal Revision No. 10 of 1963]

Criminal Procedure—Sentence—Need for deterrent sentence—Conviction not recorded—Criminal Procedure Code (Cap. 6), ss.173A and 294.

Penal Code, s.384—Extortion—Observations on.

On the accused pleading guilty to a charge under section 384 of the Penal Code the learned magistrate accepting existence of mitigating circumstances and acting under section 294 of the Criminal Procedure Code (Cap. 6) bound the accused over in the sum of $1,000 with one surety for a period of two years. On revision,

Held: section 294 of the Criminal Procedure Code can only be used where the conviction is for an offence punishable with imprisonment without the option of a fine and is inapplicable to a conviction under section 384 of the Penal Code. In the circumstances of this case, the order should have been made under section 173A of the Criminal Procedure Code.

Case referred to:—

(1) *Public Prosecutor* v. *Idris* [1955] M.L.J. 234.

CRIMINAL REVISION.

Salleh bin Abbas (Deputy Public Prosecutor) for the Public Prosecutor.

Accused in person.

Gill J.: This case has been referred to me by the magistrate who dealt with it for the purpose of revising the order which he made at the conclusion of the case.

The accused Eng Chong Lam was charged under section 384 of the Penal Code for extorting $30 from one Tan Peh, to which charge he pleaded guilty. The learned magistrate, taking into consideration certain mitigating circumstances, bound over the accused under section 294 of the Criminal Procedure Code in the sum of $1,000 with one surety for a period of two years.

In making the order for binding over, the

learned magistrate overlooked the decision of Thomson J. (as he then was) in the case of *Public Prosecutor* v. *Idris* [1] that section 294 can only be made use of where the conviction is for an offence punishable with imprisonment without the option of a fine. As an offence under section 384 of the Penal Code is punishable by imprisonment or fine and as the learned magistrate did not record a conviction against the accused, the proper course for him was to bind over the accused under section 173A of the Criminal Procedure Code. I therefore set aside his order and substituted in its place an order of binding over under section 173A.

I would like to take this opportunity to add that extortion is a serious offence, and an offence which is much too common these days. The only way to stamp out this offence, or at least to keep it in check is to pass a deterrent sentence on persons found guilty of it. People are terrified of extortionists and it is difficult to apprehend them. Once a person is produced in court on a charge of extortion and found guilty, he must be dealt with severely, unless there are exceptionally extenuating circumstances. The only reason why I did not interfere with the nature of the order made by the learned magistrate was that the Public Prosecutor had not appealed against it.

Order accordingly.

PUBLIC PROSECUTOR v. YONG FATT

[A.Cr.J. (Ong J.) November 14, 1963]

[K.L. — Criminal Appeal No. 62 of 1963]

Criminal Procedure—Sentence—Inadequacy of—Rampant crime—No extenuating circumstances for leniency—Criminal Procedure Code (Cap.6), ss.168 and 294.

Penal Code, ss.384, 385—Extortion—Vicious and rampant crime.

This was an appeal by the prosecution against inadequacy of sentence. The respondent had pleaded guilty to a charge of extortion or attempted extortion and the learned magistrate after recording conviction, bound over the accused in the sum of $500 with one surety to be of good behaviour for two years.

Held: (1) the sentence imposed by the learned magistrate was manifestly inadequate;

(2) as extortion is a vicious crime that is rampant and there were no extenuating circumstances calling for the exercise of special leniency under section 294 of the Criminal Procedure Code the maximum sentence that could be imposed by the magistrate substituted.

CRIMINAL APPEAL.

Harun bin Hashim (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong J. (delivering oral judgment): This is an appeal by the Public Prosecutor against inadequacy of sentence. The respondent had pleaded guilty in the Magistrate's Court to a charge of extortion, an offence punishable under section 384 of the Penal Code with imprisonment up to 3 years or fine or whipping or with any two of such punishments.

The summary of facts stated by the prosecution and admitted by the accused is that Dr. Chong, a private medical practitioner, on May 17, 1963 received a threatening letter demanding $2,000 from him as protection money. He made his report the next day. On May 20 the doctor received a telephone call instructing him to leave the money at a stated time and place. Nobody, however, turned up to collect the money. A week later on May 27, there was another telephone message to the doctor giving fresh instructions as to where and when the money was to be left. The doctor carried out these instructions. The accused appeared on the scene shortly after, and was arrested by the police. The money was found in his pocket.

I do not think he was rightly convicted under section 384 because when the delivery of the money was made it was done to bait the trap for the accused. The facts admitted by the accused, however, clearly establish beyond any shadow of doubt that he was guilty of attempting to put the complainant in fear of injury in order to the committing of extortion, an offence under section 385 of the Penal Code. Under section 168 of the Criminal Procedure Code an accused person charged with an offence may be convicted of an attempt to commit that offence, although the attempt is not separately charged. I accordingly substitute for the conviction under section 384 one under section 385.

The learned magistrate, after recording conviction, bound over the accused in the sum of $500 with one surety to be of good behaviour for 2 years. By all men of good sense this sentence must be held manifestly inadequate. It was also wrong in principle because of all crimes in the Penal Code there are few more vicious than extortion. In this case there were no extenuating circumstances whatsoever calling for the exercise of special leniency under section 294 of the Criminal Procedure Code. An English judge said only 3 weeks ago:

> "If the public felt that the courts were not dealing properly with evildoers then it would lose confidence in them. When thinking of a sentence as a deterrent it was important not only to consider the effect on the accused but whether the sentence would deter others."

This form of crime is rampant; the criminals operate in safety, and only few are caught with sufficient evidence to secure a conviction. They are vermin, and must be dealt with as such.

In the court where this accused was tried the maximum sentence that can be passed on him is imprisonment for one year, or whipping up to 6 strokes, or both. I regret that I cannot in the circumstances pass a heavier sentence to deter

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